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LEE AIK CHONG

v.

PERDANA MERCHANT BANKERS BHD

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HIGH COURT MALAYA, KUALA LUMPUR
HASNAH MOHAMMED HASHIM J
[SUIT NO: D4-29-2974-2000]
26 DECEMBER 2013

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BANKRUPTCY: *Discharge - Application for - Dismissal of application - Appeal against order - Importance of Director General of Insolvency's ('DGI') report - Whether complete and reliable report - Whether DGI considered offence committed by bankrupt - Delay in submitting statement of affairs - Whether dividend declared was sufficient - Whether court considered interest of public and commercial morality - Bankruptcy Act 1967, ss. 16(2)(a), 31 & 33(3)*

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The bankrupt was adjudged a bankrupt on 14 May 2001 on the petition of the JC. *Vide* a notice dated 29 January 2013 issued pursuant to s. 33(3) of the Bankruptcy Act 1967 ('the Act'), the bankrupt applied to discharge himself from bankruptcy. The Senior Assistant Registrar dismissed the application for discharge and hence, the present appeal. The Director General of Insolvency ('DGI') had prepared a report dated 26 February 2013 ('DGI's Report'). The judgment creditor ('JC') argued that the DGI's Report was insufficient and inadequate for, *inter alia*, the following reasons *ie*: (i) despite knowing that the bankrupt had accumulated debts of more than RM12 million to 11 creditors, the DGI's Report did not contain any details on whether the DGI concerned herself with the question of whether the bankrupt would be able to settle at least 50% of his debts or why he was unable to do so; (ii) the DGI's Report did not state that any asset tracing were carried out to determine whether or not the bankrupt had any other bank account/fixed deposits/investments or whether held by himself or by third parties on his behalf; (iii) the DGI's Report contained no details as to whether it had written to banks, financial institutions, stockbrokers, clubs, insurance companies and the Inland Revenue Board, to obtain the bankrupt's financial records on his income tax returns, his wife's income tax returns, his credit card statements, insurance policies, statement of accounts from his stockbrokers, bank statements and club bills; and (iv) the DGI's Report did not state that it had taken any step for the discovery of the bankrupt's property under s. 31 of the Act.

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Held (dismissing appeal with costs):

(1) In dealing with the application for discharge, the court shall take into consideration a report of the DGI as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy. This is a mandatory requirement. However, the court was not bound to accept it if it was satisfied that the report was incomplete and unreliable or made based on incomplete investigation into the conduct and affairs of the bankrupt. Without a proper and complete report by the DGI, the court would be unable to decide on the issue of discharge. The purpose of the DGI's Report is to secure a full and complete investigation and disclosure of all the material facts and/or information relating to the bankrupt particularly on issues stipulated under s. 33(4) and (6) of the Act. (para 24)

(2) The report produced by the DGI must be one that is fair and not biased for or against the bankrupt or the creditors as well as a full disclosure of the facts. The bankrupt in an application for a discharge cannot be allowed to obtain undue advantage of the weaknesses in the DGI's incomplete report. The emphasis in the instant DGI's Report seemed to be on the calculation of the dividends rather than a thorough investigation to ascertain whether the bankrupt had any asset. (paras 25 & 30)

(3) A bankrupt is required under s. 16(2)(a) of the Act to submit his statement of affairs with the DGI within seven days from being adjudged a bankrupt. However, the bankrupt only submitted his statement of affairs to the DGI more than nine months after the date of the adjudication. The DGI's Report stated that the bankrupt did not commit any offence under the Act. The bankrupt had clearly committed an offence under s. 16(2) of the Act and the DGI's Report only stated no committal proceedings were commenced. (paras 37 & 39)

(4) The assets were not of a value equal to 50% of the amount of his unsecured liabilities. The dividend declared was manifestly below the minimum requirement of 50% under the said provisions. (paras 41 & 42)

(5) The court was bound to have regard not only to the interest of the bankrupt or of the creditors alone, but also to the interest of the public, and of commercial morality. An order for

A a discharge should not be granted without proper and complete investigation into the affairs of the bankrupt by the DGI. (para 44)

(6) The DGI's Report was incomplete and no proper investigation
B was conducted. From the contents of the DGI's Report, it was apparent that the dividend declared was insufficient and was not a reasonable or fair amount to cover the debt incurred by the bankrupt. (para 48)

Case(s) referred to:
C *Re Lau Kah Lay & Tang Kuong Tiew; Ex P Cold Storage (Malaysia) Bhd [2001] 3 CLJ 960 HC* ***(refd)***

Legislation referred to:
Bankruptcy Act 1967, ss. 16(2)(a), (b), (3), 17(2), 31, 33(3), (4), (6),
D 72

For the appellant - Eric Clement; M/s Abd Halim Ushah & Assocs
For the respondent - WP Leong; M/s WP Leong & Partners

Reported by Amutha Suppayah

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JUDGMENT

Hasnah Mohammed Hashim J:

[1] By a notice of appeal to judge in chambers dated 3 May
F 2013 the bankrupt appealed against the decision of the learned Senior Assistant Registrar (SAR) on 22 April 2013 dismissing the bankrupt's application for discharge with no order as to costs.

Background

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[2] The bankrupt was adjudged a bankrupt on 14 May 2001 on the petition of the JC. On 13 August 2007, the bankrupt applied to discharge himself from bankruptcy pursuant to s. 33(3) of the Bankruptcy Act 1967 (BA) (first discharge application). However
H on the request of the JD's creditors, on 17 August 2007, a public examination of the JD was conducted pursuant to s. 17(2) of the said Act.

[3] On 8 October 2007, the learned Senior Assistant Registrar dismissed the first discharge application. On 15 September 2008,
I the bankrupt's appeal to the judge in chambers against the dismissal of the discharge application was dismissed by the learned High Court Judge. The bankrupt however did not appeal to the Court of Appeal.

[4] Five years later, by a notice dated 29 January 2013 issued pursuant to s. 33(3) of the Bankruptcy Act 1967, the bankrupt decided to apply for the second time to discharge himself from bankruptcy.

Public Examination

[5] A public examination of the JD was held on 17 August 2007. The JD admitted that before he was adjudged a bankrupt and that he held shares in four companies:

(i) Aik Shing Development Sdn Bhd;

(ii) Fumah Construction Sdn Bhd;

(iii) Potential Development Sdn Bhd; and

(iv) Richlane Corporation Sdn Bhd.

[6] The bankrupt also stated under oath that he used the account the aforesaid four companies to finance his own expenses. He also confirmed that he had paid about RM2 million to buy shares in the four companies however he said he does not own a single asset.

[7] At the time the bankrupt had signed and executed the guarantees for RM100 million in favour of Perdana Merchant Bankers (now CIMB Bank Berhad), he was aware that he would not be able to repay the amount guaranteed should Aik Shing Development Sdn Bhd fail to repay its loan.

[8] At the time of the public examination, the bankrupt was working with Muafakat Kekal Sdn Bhd, earning a monthly salary of RM3,500. His son was a shareholder in Muafakat Kekal Sdn Bhd and the bankrupt was provided with a car and all the expenses relating to the car were covered by the company. Despite stating he does not own any asset his name appears on the assessment bill of a property bearing the situated at No. 19, Jalan Cumarasamy, 51100 Kuala Lumpur (property). However, the bankrupt claimed no knowledge of this property.

[9] The bankrupt was convicted for an offence of wrongful disclosure to the KLSE in the year 2000 and was fined RM400,000. This was a year prior to his bankruptcy. The bankrupt also stated that one of the four companies paid the fine for him but he was not sure which one although he would be jailed if the fine was not paid.

A **The Director General Of Insolvency's Report (DGI)**

[10] The DGI prepared a report dated 26 February 2013 (DGI's report). The DGI had in the DGI's first discharge application filed two earlier reports, dated 13 September 2007 and
B 19 September 2007, respectively.

The Bankrupt's Arguments

[11] It is submitted by the learned counsel for the bankrupt that the bankrupt should be granted an absolute order of discharge on
C the following grounds:

(a) That the bankrupt ought not to have been adjudged bankrupt;

(b) The bankrupt stood as a guarantor for a business venture which unfortunately failed due to the 1997 Asian Economic
D downturn;

(c) The majority of the creditors are not objecting to the application for a discharge;

E (d) No offence committed by the bankrupt under the BA. The bankruptcy notices and the creditors petitions in all the three bankruptcy proceedings were all not served upon him personally but by way of substituted service as ordered by the court. Therefore, the bankrupt was unaware of any creditors
F petitions and were unable to make be present at the hearings. The learned counsel for the bankrupt argued that if a person is adjudged a bankrupt in his absence he would not be able to file his statements of affairs within the period prescribed of 21 days from the date of the adjudication as he was totally
G unaware that he was adjudged a bankrupt;

In this instant case the bankrupt had upon receiving a call memo from the DGI attended an interview on 26 February 2002. He then filed his statement of affairs. Therefore the bankrupt complied with the requirements of the law even
H before the orders were served on him on 9 February 2011.

It is further submitted that the DGI has a discretion to extend time for the bankrupt to file his statement of affairs under certain special circumstances as follows:

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(i) The DGI is satisfied that he was unable to disclose all information required relating to the bankrupt's properties and affairs as they were not available at that time;

(ii) The bankrupt was unaware of the bankruptcy orders made against him;

(iii) The bankrupt was unaware that he was suppose to file the statement of affairs within the time prescribed as he was not advised by the court or the insolvency officer;

(e) The conduct of the bankrupt for the past 12 years must be taken into consideration. The DGI report confirmed that the bankrupt has complied with all the requirements as follows:

(i) submitting every six months an account of all monies and properties;

(ii) contributed towards his monthly payments;

(iii) compiled with directions given by the DGI;

(iv) does not own any landed assets; and

(v) allowed LHDN to disclose information pertaining to his income tax.

[12] It is further submitted that the bankrupt was adjudged a bankrupt because he was a guarantor and would not have been made a bankrupt if not for the act of Perdana Merchant Bankers (PMB) to hold on to Aik Shing's shares in Seal Corporation and not settle the debts owing by Aik Shing.

[13] The bankrupt should be discharged because the brother of the bankrupt has contributed to the estate the sum of RM620,000 in order that the DGI was able to declare a better dividend.

The JC's Arguments

[14] It is argued by the JC that the DGI's report is insufficient and inadequate for the purposes of the bankrupt's discharge application for the following reasons:

(a) The bankrupt himself admitted during the public examination that he had used the accounts of the ... four companies to finance his own expenses. The DGI's report makes no mention of any further investigation on this although this fact was known 17 August 2007;

A (b) Despite knowing that the bankrupt had accumulated debts of more than RM12 million to 11 creditors, the DGI report does not contain any details on whether the DGI concerned herself with the question of whether the bankrupt would be able to settle at least 50% of his debts or why he was unable to do so;

B (c) In the DGI report, the DGI states that:

(i) The first dividend of 0.17% was paid on 6 September 2010; and

C (ii) based on the balance currently in the JD's estate (RM96,667.33) it is enough to declare a dividend of 0.6% to the bankrupt's creditors;

(d) The public examination on 17 August 2007 revealed that the D bankrupt was a person of means prior to his bankruptcy. He had pumped in RM2 million to buy shares in the four companies but yet he claimed not to own a single asset or have any bank accounts. The DGI report does state that any asset tracing were carried out to determine whether or not E the bankrupt had any other bank account/fixed deposits/ investments or whether held by himself or by third parties on his behalf;

(e) The DGI's report contained no details as to whether it has F written to banks, financial institutions, stockbrokers, clubs, insurance companies and the Inland Revenue Board, to obtain the bankrupt's financial records on his income tax returns, his wife's income tax returns, his credit card statements, insurance policies, statement of accounts from his stockbrokers, bank statements and club bills;

G (f) The DGI's report also does not state that it has taken any step for the discovery of the bankrupt's property under s. 31 BA where the bankrupt's wife or any person known or suspected to have in his possession any of the estate or H effects belonging to the bankrupt or any person whom the court deems capable of giving information is respect of the bankrupt, his dealings or property may be summoned before the court;

I (g) No detail have been given as to since when the bankrupt started earning RM6,750 monthly and why it was only on 1 October 2011 did the DGI increase the bankrupt's monthly repayment to RM5,000 per month;

(h) The DGI's report is silent on what investigations she had undertaken to check whether the property situated at No. 19, Jalan Cumarasamy, 51100 Kuala Lumpur (property) belonged to the JD as the assessment bill bore his name. This is despite the fact that the DGI's report states that all three receiving orders and adjudication orders together with the "Borang KP-1" were sent to the same address";

(i) The DGI's report states that the JD's brother had deposited a sum of RM620,000 into its account pursuant to a proposed settlement to all the JD creditors. The JC as the largest creditor of the JD rejected the proposal. The DGI's report is silent as to whether any investigation was done as the payment of RM620,000 by the bankrupt's brother, to ensure that the bankrupt has no hidden assets stashed away whether in his name or others.

[15] It is the submission of counsel for the JC that the DGI's report is inadequate and insufficient as it did not addressed the issues revealed by the JD during the public examination. The JD had admitted that at the time he signed the guarantees for RM100 million in favour of PMB he was aware that he was not able to repay the loan.

Decision

[16] After considering the arguments of the counsels, the written submissions together with the authorities the appeal of the bankrupt is dismissed with cost. My reasons are set out below.

Reasons

[17] A bankrupt may apply for a discharge pursuant to s. 33(1) of the Act:

> A bankrupt may at any time after being adjudged bankrupt apply to the court for an order of discharge, and the court shall appoint a day for hearing the application.

[18] Upon hearing the application the court may grant or refuse an absolute order of discharge; or grant a conditional discharge. Section 33(3) of the Act provides:

> On the hearing of the application the court shall take into consideration a report of the Director General of Insolvency as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy,

and may either grant or refuse an absolute order of discharge, or suspend the operation order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property.

Public Examination

[19] The DGI is empowered to carry out his duties under the Act for the purpose of securing full and complete investigations into the affairs and conduct of a bankrupt. Section 17 of the Act provides:

> (1) Where the court makes a receiving order, the Director General of Insolvency may make an application to hold a public sitting on a day to be appointed by the court for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealing and property:
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> Provided that when the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court renders him unfit to attend his public examination the court may dispense with such examination or direct the debtor to be examined in such manner and place as the court thinks expedient.
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> (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs and after the first meeting of creditors.
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> (3) The court may adjourn the examination from time to time.
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> (4) Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure.
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> (5) The Director General of Insolvency shall take part in the examination of the debtor, and for the purpose thereof may, if specially authorized by the Attorney General, employ an advocate and solicitor but no advocate and solicitor shall be allowed to take part in the examination on behalf of the debtor.
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> (6) The court may put such questions to the debtor as it thinks expedient.
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> (7) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court puts or allows to be put to him.

(8) Such notes of the examination as the court thinks proper shall be taken down in writing by the Registrar and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times.

(9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the court from directing a further examination of the debtor as to his conduct, dealings and property whenever it sees fit to do so.

[20] During such examination, any creditor who has tendered a proof of debt or his representative authorised in writing may question the bankrupt concerning his affairs and conduct. The DGI shall also take part in the examination. The court may also put such question to the bankrupt as it thinks expedient. The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the court puts or allow to be put to him.

[21] An examination of the bankrupt may be followed by the process of discovery of the bankrupt's property under s. 31 of the said Act where the bankrupt's wife (or husband) or any person known or suspected to have in his possession any of the estate or effects belonging to the bankrupt or supposed to be indebted to the bankrupt or any person whom the court deems capable of giving information respecting the bankrupt, his dealings or property may be summoned before the court.

[22] On 13 August 2007 the bankrupt applied to discharge himself pursuant to s. 33(1) BA. Upon the application of the creditors a public examination was conducted on 17 August 2007. The bankrupt admitted under oath that:

(i) He had held shares in four companies and had used the accounts of the four companies to finance his own expenses;

(ii) Paid RM2 million to buy shares;

(iii) Does not own a single asset;

(iv) He knew when he signed the guarantees for RM100 million in favour of PMB would not be able to pay the amount guaranteed should Aik Shing Development Sdn Bhd defaulted;

A (v) At the time of the public examination he was working in Muafakat Kekal Sdn Bhd with a monthly salary of RM3,500. His son was a shareholder in the company; and

(iv) His name appears on the assessment bill of a property.

B **[23]** On 8 October 2007 the learned SAR dismissed the bankrupt's application for a discharge.

The DGI Report

C **[24]** In dealing with the application for discharge the court shall take into consideration a report of the DGI as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy. This is a mandatory requirement under the said provision. Thus, for such an D application for a discharge the report of the DGI is of utmost importance. However the court is not bound to accept it if it is satisfied that the report is incomplete and unreliable or made based on incomplete investigation into the conduct and affairs of the bankrupt. Without a proper and complete report by the DGI, E the court would be unable to decide on the issue of discharge. The purpose of the DGI report is to secure a full and complete investigation and disclosure of all the material facts and/or information relating to the bankrupt particularly on issues stipulated under s. 33(4) and (6) of the Act:

F (4) In all cases where it is proved to the satisfaction of the court that the bankrupt has committed any offence under this Act or under any written law repealed by this Act or under ss. 421, 422, 423 or 424 of the Penal Code [Act 574] the court shall unless for special reasons it otherwise determines either refuse the G discharge or suspend the operation of the order until a dividend of not less than fifty per centum has been paid to the creditors, and on proof of any of the facts mentioned in sub-s. (6) the court shall either:

(a) refuse the order; or

H (b) suspend the operation of the order for a specified time; or

(c) suspend the operation of the order until a dividend of not less than fifty per centum has been paid to the creditors; or

I (d) grant an order of discharge subject to such conditions as aforesaid.

The powers of suspending and attaching conditions to a bankrupt's discharge may be exercised concurrently.

...

(6) The facts hereinbefore referred to are:

(a) that the bankrupt has omitted to keep such books of account as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy, or within such shorter period immediately preceding that event as the court deems reasonable in the circumstances;

(b) that the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent;

(c) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable ground of expectation, proof whereof shall lie on him, of being able to pay it;

(d) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(e) that the bankrupt has brought on or contributed to his bankruptcy by rash and hazardous speculations or extravagance in living, or by recklessness, or gambling or want of reasonable care and attention to his business and affairs;

(f) that the bankrupt has delayed or put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other legal proceedings properly brought or instituted against him;

(g) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;

(h) that the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors; (i) that the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view to making his assets equal to an amount of fifty ringgit per centum of the amount of his unsecured liabilities;

(j) that the bankrupt has in Malaysia or elsewhere on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors;

(k) that the bankrupt has been guilty of any fraud or fraudulent breach of trust;

A (l) that the bankrupt has within three months immediately preceding the date of the receiving order sent goods out of Malaysia under circumstances which afford reasonable grounds for believing that the transaction was not a bona fide commercial transaction;

B (m) that the bankrupt's assets are not of a value equal to fifty ringgit per centum of the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to fifty ringgit per centum of his unsecured liabilities has arisen from circumstances for or in respect of which he cannot justly be held blameable.
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[25] The report produced by the DGI therefore must be one that is fair and not bias for or against the bankrupt or the creditors as well a full disclosure of the facts. Under the law, the DGI has an onerous task and is duty bound to carry out a complete and
D efficient investigation. Section 72 BA stipulates:

As regards the debtor, the Director General of Insolvency shall:

E (a) investigate the conduct of the debtor, and report to the court stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Act or under ss. 421, 422, 423 or 424 of the Penal Code or which would justify the court in refusing, suspending or qualifying an order for his discharge;

F (b) make such other reports concerning the conduct of the debtor as the court directs or as may be prescribed;

(c) take such part as may be directed by the court or prescribed in the public examination of the debtor;

G (d) take such part and give such assistance in relation to the prosecution of any fraudulent debtor or any other person charged with an offence under this Act, as the Public Prosecutor may direct.

[26] The bankrupt in an application for a discharge cannot be
H allowed to obtain undue advantage of the weaknesses in the DGI's incomplete report. Ian Chin J in the case of *Re Lau Kah Lay & Tang Kuong Tiew; Ex P Cold Storage (Malaysia) Bhd* [2001] 3 CLJ 960 in his judgment said:

I ... the OA carries the onerous task of ensuring that a bankrupt has no hidden assets stashed away, whether in his name or in the name of his wife or children, as otherwise people will be imbued with the message that money borrowed could be stashed

away and need not be repaid and such horde can be enjoyed even when one is a bankrupt. If the office of the OA does not show itself equal to the task of preventing such rip-off of the creditor then cases of borrowers not repaying and not minding to be made bankrupt would be the rule rather than the exception. Then, business morality would decline.

[27] The DGI had prepared two reports dated 13 September 2007 and 19 September 2007 for the first application to discharge. The learned counsel for the JC urged the court to consider these two reports as the present report of the DGI did not touch on the issues raised in the public examination conducted in 2007.

[28] Section 33(4) of the Act *inter alia* provides that where a bankrupt has committed any offence under the Act, the court shall either refuse the discharge or suspend the order until a dividend of not less than 50% has been paid to the creditors but the DGI may for special reasons extend the time by order made under his hand, to be forthwith filed, and recording the reasons for such an extension. In the present case the JD was adjudged a bankrupt on 14 May 2001 on the petition of the JC.

[29] In the preparation of a report with regards to a bankrupt the DGI must apply the same standard and principles to all bankrupts and treat all bankrupts on equal footing whether the amount involved is RM50,000 or in the millions. Investigation must be conducted thoroughly.

[30] In the instant DGI report the emphasis seems to be on the calculation of the dividends rather than a thorough investigation to ascertain whether the bankrupt has any asset. The DGI only wrote to the Dewan Bandaraya Kuala Lumpur (DBKL) valuation department and did not conduct any other searches such the land offices, etc.

[31] According to the said report the bankrupt has been paying monthly instalments, as follows:

(i) RM100 commencing from 1 March 2002;

(ii) RM200 commencing from 1 April 2002;

(iii) RM300 commencing from 1 April 2003;

(iv) RM400 commencing from 1 April 2004;

(v) RM500 commencing from 1 August 2009;

(vi) RM1,000 commencing from 1 December 2010;

(vii) RM2,000 commencing from 1 December 2011; and

(viii) RM5,000 commencing from 1 October 2011.

[32] Total amount paid is RM135,200. However despite being a bankrupt he travelled overseas with the sanction of the DGI a total of 17 times. Normally a bankrupt is allowed to travel overseas only on exceptional grounds for eg, medical treatments, religious reason such as the performing the Hajj etc. It is not stated in the said report whether he travelled overseas for medical treatments or for any other urgent reasons. He did however paid RM106,000 into the estate.

[33] The DGI received a total of 14 proof of debts (POD) from 14 creditors claiming a total of RM48,760,897.46. The total amount is RM12,695,955.37 for 11 creditors. The other three PODs were withdrawn because of settlement. The total amount for the three PODs: RM29,510,695.96.

[34] By a letter dated 13 December 2010 from the brother of the bankrupt, Lee Hing Lee proposed to settle 5% of the debts. The creditors did accept the proposed settlement.

Delay In Submitting His Statement Of Affairs

[35] Pursuant to s. 16(2)(b) of the Bankruptcy Act 1967, the bankrupt is required to submit his statement of affairs to the DGI within 21 days from the date of him being adjudged bankrupt. The bankrupt was adjudged a bankrupt on 14 May 2001 but only submitted his statement of affairs to the DGI on 26 February 2002 ie, more than nine months after the date of the adjudication.

[36] There is no mention in both the DGI's reports that an extension of time has been granted to the bankrupt to file his statements of affairs out of time or any reasonable explanation or excuse by the bankrupt for delay in filing his statement of affairs. The bankrupt only filed his amended statement of affairs on 7 December 2012 ten years after he submitted his first statement of affairs in 2002. However no explanation was given for the ten years delay and the reasons for amending the said statement of affairs.

[37] A bankrupt is required under s. 16(2)(a) of the Act to submit his statement of affairs with the DGI within seven days from him being adjudged bankrupt. However, the bankrupt in the present case only submitted his statement of affairs to the DGI on 26 February 2002 ie, more than nine months after the date of the adjudication. The reason he said was that he was unaware that an order an adjudication was granted against him. There is no mention in the DGI's reports of any extension of time granted to the bankrupt to file the statement of affairs out of time or any reasonable explanation or excuse by the bankrupt for his delay in filing the statement of affairs in the DGI's reports. However the DGI in his reports states that the bankrupt did not commit any offence under the Act.

[38] Section 16(3) of the Act provides that if the bankrupt fails, without reasonable excuse, proof whereof shall lie on him, to comply with the requirement, he shall be guilty of contempt of court and may be punished accordingly:

> (3) If the debtor fails without reasonable excuse, proof whereof shall lie on him, to comply with the requirement of this section he shall be guilty of a contempt of court and may be punished accordingly, and the court may on the application of the Director General of Insolvency or of any creditor adjudge him bankrupt.
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> (4) Any person stating himself, in writing, to be a creditor of the bankrupt may personally or by agent inspect this statement at all reasonable times and take any copy thereof or extract there from, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court and shall be punishable accordingly on the application of the Director General of Insolvency.

[39] Therefore it is submitted that the bankrupt in the present case has clearly committed an offence under s. 16(2) of the Bankruptcy Act 1967 and the DGI's report only states no committal proceedings were commenced.

[40] Therefore a contempt of court action under s. 16(3) BA is an offence under the Act. The bankrupt in this present case has clearly committed an offence under s. 16(2) punishable under s. 16(3) of the Act. Despite the delay the DGI accepted the statement of affairs filed on 22 March 2002.

The Assets Are Not Of A Value Equal To Fifty Ringgit Per Centum Of The Amount Of His Unsecured Liabilities

[41] The estate amounting to RM96,667.33 is only sufficient to declare a dividend of 0.6% to all its creditors, after taking into consideration the expenses and administrative costs incurred by the DGI. The total amount of debts admitted by the DGI is RM12,695,955.37 of which RM7,842,238.33 is owed to the bankrupt. Even after taking into account the first dividend declared by the DGI amounting to RM20,804.86 (0.0027%) to the JC, it is far below the threshold of 50% of the amount of his unsecured liabilities.

[42] I agree with the submissions of learned counsel for the JC that the dividend declared was manifestly below the minimum requirement of 50% under the said provisions.

[43] Learned counsel for the bankrupt submitted that the bankrupt should be discharged on the ground that, he should be a free man and able to earn his livelihood. He further submitted that it is against public interest for an individual to remain a bankrupt and such situation is of no benefit to any one, therefore an order for discharge should be made.

[44] I am of the view that in considering the question of bankrupt's discharge the court is bound to have regard not only to the interest of the bankrupt or of the creditors alone, but also to the interest of the public, and of commercial morality. In an application for a discharge, each case has to depend upon its own individual circumstances. The DGI's report is very important and is an integral piece of document to assist the court in its consideration and determination whether a bankrupt should be discharge. Without a proper and complete report on all the relevant issues the court will not be able to exercise its judicial discretion. The DGI must appreciate the importance of his investigations and the report, failing which the report would be unreliable and the application by the bankrupt for a discharge would ultimately be refused.

[45] I agree with the submission of the learned counsel for the bankrupt that an individual should not remain a bankrupt and he should be able to make a fresh start as soon as he is discharged by the court. However the court also appreciates that in

bankruptcy matters, the DGI must investigate into the reason for the bankrupt's insolvency so that the interest of the creditors and the public are protected.

[46] It is only in deserving cases that a bankrupt may be discharged from his bankruptcy, but not at the expense of commercial morality and public perception on bankruptcy law in the country. In allowing a discharge, the court must be very cautious in balancing between the interest of the bankrupt as an individual and the interest of the public and commercial reality at large. The application for a discharge can easily be abused especially in cases where the DGI has failed to carry out proper and complete investigation into the affairs of the bankrupt. It is essential that in the report here must be full and frank disclosure of all the relevant and material facts in the DGI's reports.

[47] An order for a discharge should not be granted without proper and complete investigation into the affairs of the bankrupt by the DGI:

> The public as well as commercial players should not be imbued with the perception that a person can easily borrow money (even in big amount) from financial institutions or create debts with other business creditors, then stash the money away, whether in his own name or any other persons and need not be repaid; then personally apply for a bankruptcy order against him (as in the present case) and after a short period apply for an order for a discharge with a minimum or too little dividend to be paid to the creditors, and after the discharge he can enjoy a luxury life. If this practice and perception is not checked, then commercial morality would decline. In this type of fiasco, the court and the DGI should be blamed for not carrying out their duties effectively under the bankruptcy law.

[48] I am of the considered view that the DGI report is incomplete and no proper investigation was conducted. From the contents of the DGI report it is apparent therefore that the dividend declared is insufficient and is not a reasonable or fair amount to cover the debt incurred by the bankrupt. In my view to allow the discharge of a bankrupt on these terms will make a mockery of the right to bankruptcy proceedings available to creditors. For all the above the reasons the appeal ought to be and is now dismissed with costs, and the Senior Assistant Registrar's order dismissing the application for discharge as a bankrupt is here affirmed.